

REMARKS/ARGUMENTS

Claims 1-5 and 10-12 were rejected and remain pending in the instant application. Claim 6-9 and 13-29 were cancelled without prejudice in response to the Requirement for Restriction/Election mailed July 16, 2009. Claims 1-5 and 10-12 are amended herein. All amendments to the claims are fully supported by the original disclosure, and no new matter is added.

Reconsideration of the rejections is respectfully requested.

Claims Rejection Under 35 USC § 103

Claims 1-5 and 10-12 were rejected in the FOA under 35 USC § 103(a) as allegedly being unpatentable over US Patent No. 6,820,259 to Kawamata et al. (hereinafter *Kawamata*) in view of US Pub. No. 2003/0022657 to Herschberg et al. (hereinafter *Herschberg*). In response, notwithstanding Applicant's respectful disagreement with the rejections, to further prosecution, claims 1-5 and 10-12 have nonetheless been amended (without prejudice) to clearly distinguish Applicant's invention over the cited references.

Claim 1 has been amended to recite in pertinent part, "a wireless computing apparatus having ... executable instructions ... to cause the wireless computing apparatus to:

request available updates;

receive, in response to said request, an update catalog of available updates, the available updates comprising available discretionary updates;

receive, with the update catalog, mandatory updates;

install the received mandatory updates;

determine that a first group of the available discretionary updates is relevant to the wireless computing apparatus, and that a second group of the available discretionary updates is irrelevant to the wireless computing apparatus; and

depict representations of the available discretionary updates of the first group in a selectable manner to enable user control over installation of the relevant discretionary updates."

These amendments are supported at least on page 4, lines 1-4; page 7, lines 21-30; page 9, lines 11-32; page 10, lines 1-26; the Abstract; and Figures 1, 2, and 4-6.

Accordingly, when viewed as a whole, as required by law, claim 1 recites a wireless computing apparatus that is equipped with an update functionality that is capable of enabling ***“user control over installation of ... relevant discretionary updates.”*** In particular, the update functionality includes the capability of “determining” from an update catalogue (provided with mandatory updates) having discretionary updates, ***“that a first group of ... discretionary updates is relevant to the wireless computing apparatus, and that a second group of ... discretionary updates is irrelevant to the wireless computing apparatus;”*** and the capability of “depicting” “representations of the ... discretionary updates of the first group in a selectable manner ...” For reasons set forth below, Applicant respectfully submits that such a wireless computing apparatus – in particular, a wireless computing apparatus with such update capability – is not taught or suggested by the cited references.

Kawamata is directed to a software distribution system (see title) that includes a terminal apparatus having a reception unit for receiving a data group or a program group distributed from a satellite or a group distribution system, and an update sequence management unit. (See abstract). Kawamata is most concerned with the update sequence. (See e.g., col. 1, lines 40-51.) Contrary to the Examiner’s assertion, Kawamata does not teach or suggest the two “receive” recitations of claim 1, requiring the claimed wireless computing apparatus to “receive ... an update catalog of available updates ... comprising available discretionary updates; receive, with the update catalog, mandatory updates ...” In rejecting claim 1, the Examiner relied on Kawamata’s teachings of “software group” in col. 13, lines 15-23, 46-51; Figures 7 and 18 as teaching these recitations. Respectfully, the Examiner has misread Kawamata. The “software group” received by the terminal apparatus is constituted and sent by update management sequence unit 190 which is disposed on the distribution side communication unit 115. Therefore, as illustrated in Fig. 7 and 18, all the updates within the “software group” received by the terminal apparatus are to be installed. There are no teachings or suggestions about “discretionary updates,” let alone “discretionary updates” where some are “relevant” and others are “irrelevant” to the receiving wireless computing apparatus.

Herschberg suffers from the same deficiencies. Herschberg is directed to application provisioning over a wireless network (see title). In Herschberg, an administration tool is provided to a server to enable an administrator to “specify whether an application is required,

optional, or unauthorized for individual users or user groups and whether an application is compatible with a specific type of user device.” Thus, when a user attempts to log into the server, the system automatically downloads all compatible required applications to the user’s devices and deletes all unauthorized download applications from the user’s device.” (See Abstract). Therefore, under Herschberg, the user device receives applications that the user devices have to install, and instructions to delete from the user devices unauthorized installs. Once again, there is no teaching or suggestion of a wireless computing apparatus “receiv(ing) ... an update catalog of available updates ... comprising available discretionary updates; receiv(ing), with the update catalog, mandatory updates ...”

Given that neither Kawamata nor Herschberg contains any teachings or suggestions about “receiv(ing) ... an update catalog of available updates ... comprising available discretionary updates; receiv(ing), with the update catalog, mandatory updates ...,” it follows then neither teaches or suggests the recitation of “determining” from an update catalogue (provided with mandatory updates) having discretionary updates, ***“that a first group of ... discretionary updates is relevant to the wireless computing apparatus, and that a second group of ... discretionary updates is irrelevant to the wireless computing apparatus;”*** and the recitation of “depicting” “representations of the ... discretionary updates of the first group in a selectable manner ...”

Therefore, for at least the above reasons, claim 1 is allowable over the cited references under § 103(a).

Claim 10 has been amended to recite subject matter substantially similar to that of amended claim 1, and is therefore allowable over the cited combination for at least the same reasons.

Claims 2-5 and 11-12 depend from claims 1 and 10, respectively, incorporating their recitations, and are thus allowable over the cited references for at least the same reasons. Claims 2-5 and 11-12 are further allowable over the cited references for their additional recitations (below), which are not taught or suggested by the cited references:

- Claim 2: “the executable instructions further operative, upon execution, to cause the wireless computing apparatus to select a desired discretionary update from said first group; and to obtain said desired discretionary update.”
- Claim 3: “the executable instructions further operative, upon execution, to cause the wireless computing apparatus to install said obtained discretionary update.”
- Claim 4: “wherein said second group comprises an available discretionary update currently installed on the wireless computing apparatus.”
- Claim 5: “wherein said second group comprises an available discretionary update inapplicable to software currently installed on the wireless computing apparatus.”
- Claim 11: “wherein said determining comprises comparing, by the wireless mobile device, the update catalog to software currently installed on the wireless mobile device, wherein the software is at least one of an operating system or an application.”
- Claim 12: “wherein said determining comprises comparing, by the wireless mobile device, the update catalog to software currently installed on the wireless mobile device, wherein the software is at least one of an operating system or an application.”

CONCLUSION

In view of the foregoing amendments and remarks, Applicants believe the applicable rejections have been overcome and all claims remaining in the application are presently in condition for allowance. Accordingly, favorable consideration and a Notice of Allowance are earnestly solicited. If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 407-1542.

It is not believed that extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a). If any fees are due in connection with filing this paper, the Commissioner is authorized to charge the Deposit Account of Schwabe, Williamson and Wyatt, P.C., No. 50-0393.

Respectfully submitted,
SCHWABE, WILLIAMSON & WYATT, P.C.

Date: March 16, 2010

By: /Jo Ann Schmidt/
Jo Ann Schmidt
Reg. No.: 62,255